

Daniel D. Harshman (SBN# 177139)
Charles E. Wheeler (SBN #82915)
COZEN O'CONNOR
425 California Street, Suite 2400
San Francisco, CA 94104
Telephone: (415) 617-6100
Facsimile: (415) 617-6101
E-mail: dharshman@cozen.com
cwheeler@cozen.com

Attorneys for Defendant
PSI CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRIENDLYWAY, AG, a German Corporation,

Plaintiff,

v.

PSI CORPORATION, a Nevada corporation
f/k/a FRIENDLYWAY CORPORATION, f/k/a
BIOFARM, INC.; and DOES 1 – 20,

Defendants.

Case No.: C 07-2990-MEJ

**DEFENDANT PSI CORPORATION'S
NOTICE OF FILING OF
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE CONSOLIDATED**

PLEASE TAKE NOTICE that Defendant PSI Corporation filed an Administrative Motion to Consider whether Cases Should be Considered Related pursuant to Civil L.R. 3-12 & Civil L.R. 7-11. The Administrative Motion was filed in the case of *PSI Corp. v. von Welczek*, case no. C07-02869 SBA, prior to the re-assignment of this action to the Honorable Samuel Conti. A true and correct copy of the Administrative Motion to Consider whether Cases Should be Considered Related is attached hereto as **Exhibit "A."**

Dated: August 1, 2007

COZEN O'CONNOR

By: S/Daniel D. Harshman
Daniel D. Harshman
Attorneys for Defendant
PSI CORPORATION

EXHIBIT “A”

1 Daniel D. Harshman (SBN# 177139)
2 COZEN O'CONNOR
3 425 California Street, Suite 2400
4 San Francisco, CA 94104
5 Telephone: (415) 617-6100
6 Facsimile: (415) 617-6101
7 E-mail: dharshman@cozen.com

8 Attorneys for Plaintiff
9 PSI CORPORATION

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 PSI CORPORATION (f/k/a/ FRIENDLYWAY
15 CORPORATION, f/k/a BIOFARM, INC.),

16 Plaintiff,

17 vs.

18 ALEXANDER VON WELCZECK,
19 HENRY LO, MICHAEL DRAPER,
20 and FRIENDLYWAY AG,

21 Defendants.

22 FRIENDLYWAY, INC., KARL
23 JOHANNSMIEIER, PACIFIC CAPSOURCE,
24 INC., and DERMA PLUS, INC.,

25 Nominal Defendants.

Case No. C 07-02869 SBA

**PLAINTIFF PSI CORPORATION'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE CONSIDER RELATED**

26 Pursuant to Civil L.R. 7-11, Plaintiff PSI Corporation files this Administrative
27 Motion and moves this Honorable Court to grant its motion and issue an order relating an
28 action recently removed to the United States District Court for the Northern District of
California with this action.

///

1 I. THE RELATED ACTION

2 Plaintiff PSI Corporation recently filed a Notice of Removal on June 8, 2007 in the
3 case captioned, *friendlyway Ag v. PSI Corporation*, Case No. C 07 – 2990 MEJ (hereinafter
4 “Removed Action”). Prior to its removal to this Court, the Removed Action was pending
5 in the Superior Court in and for the County of San Francisco, Case no. CGC-07-462622. The
6 complaint in the Removed Action was filed in Superior Court on or about April 23, 2007
7 and putatively served on a subsidiary of PSI Corporation on or about May 10, 2007.

8 II. ADMINISTRATIVE RELIEF REQUESTED

9
10 Plaintiff requests that the Court issue an Order that the removed case is related to
11 the instant action pursuant to Civil L.R. 3-12 & 7-11.

12 III. REASONS ADMINISTRATIVE RELIEF IS SOUGHT

13 Civil L.R. 3-12(a) defines a related case as one where:

- 14 (1) The actions concern substantially the same parties, property,
15 transaction or event; and
16 (2) It appears likely that there will be an unduly burdensome
17 duplication of labor and expense or conflicting results if
the cases are conducted before different judges.

18 Civil L.R. 3-12(a).

19 Whenever a party believes that an action removed to this district may be related to
20 an action pending in this district, that party must file in the earlier filed case an
21 Administrative Motion to Consider Whether Cases Should be Related. Civil L.R. 3-12(b).
22 Plaintiff believes the Removed Action is related to this action because the Removed Action
23 concerns substantially¹ the same common stock issued in the same corporate acquisition
24 that is at issue in this case. Further, there exists the likelihood of conflicting results if the
25

26 ¹ The number of parties/shareholders in this case is larger than the number of
27 shareholders/former shareholders in the Removed Action. The same shares of stock are at
28 issue in both cases although the Removed Action includes additional defendants and, thus,
additional shares of stock.

1 two cases are separately conducted before different judges. In the Removed Action,
2 friendlyway AG seeks to compel Plaintiff to convey or transfer all of the shares allegedly
3 issuable in a Share Exchange Agreement. Whereas, Plaintiff seeks to cancel or rescind the
4 Share Exchange Agreement and further seeks the return of the Plaintiff's stock described in
5 that agreement. If the Removed Action independently proceeded to a judgment, the
6 Removed Action could come into conflict with this action in that one case could direct the
7 enforcement of an agreement that is rescinded by the other court, or by one case directing
8 the conveyance shares that the other directs to be returned. Should the two lawsuits be
9 conducted before different judges, it would pose the likelihood of unduly burdensome
10 duplication of labor and effort concerning discovery and other pre-trial procedures and,
11 further, it would pose the likelihood of conflict results over the same agreement and the
12 same corporate stock.

13
14 The administrative remedy of finding the two cases related also fosters judicial
15 economy and efficiency.

16 IV. CONCLUSION

17 For the foregoing reasons and based upon this Administrative Motion and the
18 Supporting Declaration, Plaintiff respectfully requests that the administrative relief herein
19 sought be granted, and that this Court consider this action and the Removed Action as
20 related under Civil L.R. 3-12(a).

21 Dated: July 12, 2007.

COZEN O'CONNOR

23 By: s/Daniel D. Harshman
24 Daniel D. Harshman, Esq.
Attorneys for Plaintiff
25 PSI Corporation

26 SAN FRANCISCO\41234\1 198844.000

1 Daniel D. Harshman (SBN# 177139)
2 COZEN O'CONNOR
3 425 California Street, Suite 2400
4 San Francisco, CA 94104
5 Telephone: (415) 617-6100
6 Facsimile: (415) 617-6101
7 E-mail: dharshman@cozen.com

8 Attorneys for Plaintiff
9 PSI CORPORATION

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 PSI CORPORATION (f/k/a/ FRIENDLYWAY
15 CORPORATION, f/k/a BIOFARM, INC.),

16 Plaintiff,

17 vs.

18 ALEXANDER VON WELCZECK,
19 HENRY LO, MICHAEL DRAPER,
20 and FRIENDLYWAY AG,

21 Defendants.

22 FRIENDLYWAY, INC., KARL
23 JOHANNSMIEIER, PACIFIC CAPSOURCE,
24 INC., and DERMA PLUS, INC.,

25 Nominal Defendants.

Case No. C 07-02869 SBA

**DECLARATION OF DANIEL
HARSHMAN IN SUPPORT OF
PLAINTIFF PSI CORPORATION'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE CONSIDER RELATED**

26 I, Daniel D. Harshman, declare:

27 1. I am an attorney licensed to practice law in the State of California and a
28 member of the bar of this United States District Court. I am counsel of record for Plaintiff
PSI Corporation. I have personal knowledge of the facts set forth and if called as a witness
could competently testify to the matters set forth in this Declaration.

1 2. On June 13, 2007, I circulated an e-mail to opposing counsel inquiring
2 whether they might stipulate that this case and the case of *friendlyway AG v. PSI Corp.*, Case
3 no. C07-2990 MEJ were "related" within the meaning of L.R. 3-12 and L.R. 7-1. I discussed
4 the "relatedness" issue with several opposing counsel.

5 3. Attorney Weiss, representing Defendant friendlyway AG, advised that his
6 client would not oppose an administrative motion to find the two cases related under the
7 Local Rule.

8 4. Attorney Lewis, representing Defendants Henry Lo and Alexander von
9 Welczech, did not state his position on the relatedness of the two cases.

10 5. Attorney Lippenberger, representing Defendant Karl Johannsmeier, has not
11 reached a conclusion whether the two cases may be related.

12 6. As of the date of this Declaration, Plaintiff is attempting to serve the
13 Defendant Michael Draper. The Defendant Derma Plus, Inc. has been served but counsel
14 has not yet entered an appearance for Derma Plus, Inc.

15 7. Based upon the foregoing, a stipulation among all parties and their counsel
16 regarding "related cases" under Civil L.R. 3-12 is not feasible.

17 I declare under penalty of perjury under the laws of the State of California and the
18 laws of the United States of America that the foregoing is true and correct.

19 Executed this 12th day of July, 2007 at San Francisco, California.

20 s/Daniel D. Harshman

21 Daniel D. Harshman

22 SAN_FRANCISCO\41235\1 198844.000

1 Daniel D. Harshman (SBN# 177139)
COZEN O'CONNOR
2 425 California Street, Suite 2400
San Francisco, CA 94104
3 Telephone: (415) 617-6100
Facsimile: (415) 617-6101
4 E-mail: dharshman@cozen.com

5 Attorneys for Plaintiff
PSI CORPORATION

6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 PSI CORPORATION (f/k/a/ FRIENDLYWAY
CORPORATION, f/k/a BIOFARM, INC.),

12 Plaintiff,

13 vs.

14 ALEXANDER VON WELCZECK,
HENRY LO, MICHAEL DRAPER,
15 and FRIENDLYWAY AG,

16 Defendants.

17
18 FRIENDLYWAY, INC., KARL
JOHANNSMIEIER, PACIFIC CAPSOURCE,
19 INC., and DERMA PLUS, INC.,

20 Nominal Defendants.

Case No. C 07-02869 SBA

**[PROPOSED] ORDER GRANTING
PLAINTIFF PSI CORPORATION'S
ADMINISTRATIVE MOTION THAT
CASES ARE CONSIDER RELATED**

21 The administrative motion of Plaintiff PSI Corporation pursuant to Civil L.R. 3-12
22 came before The Honorable Sandra B. Armstrong for consideration. The court having
23 reviewed Plaintiff PSI Corporation's Administrative Motion to Consider Whether Cases
24 Should be Considered Related and the accompanying Declaration of Daniel D. Harshman,
25 good cause appearing therefore,
26

1 The court finds that the case of *friendlyway Ag v. PSI Corporation*, Case No. C 07 –
2 2990 MEJ is related to this case because the two actions concern substantially the same
3 property and/or transaction within the meaning of L.R. 3-12(a). Accordingly, Plaintiff's
4 Administration Motion is GRANTED.

5 IT IS HEREBY ORDERED that the two actions are related within the meaning of L.R.
6 3-12(a).
7

8 Dated: _____

The Honorable Saundra B. Armstrong
United States District Court Judge

1 Daniel D. Harshman (SBN# 177139)
2 COZEN O'CONNOR
3 425 California Street, Suite 2400
4 San Francisco, CA 94104
5 Telephone: (415) 617-6100
6 Facsimile: (415) 617-6101
7 E-mail: dharshman@cozen.com

8 Attorneys for Plaintiff
9 PSI CORPORATION

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 PSI CORPORATION (f/k/a/ FRIENDLYWAY
15 CORPORATION, f/k/a BIOFARM, INC.),

Case No. C 07-02869 SBA

16 Plaintiff,

PROOF OF SERVICE

17 vs.

18 ALEXANDER VON WELCZECK,
19 HENRY LO, MICHAEL DRAPER,
20 and FRIENDLYWAY AG,

21 Defendants.

22 FRIENDLYWAY, INC., KARL
23 JOHANNSMIEIER, PACIFIC CAPSOURCE,
24 INC., and DERMA PLUS, INC.,

25 Nominal Defendants.

26 ///

27 ///

28 ///

///

PROOF OF SERVICE

I, the undersigned, declare: I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the County of San Francisco, California, in which county the within mentioned service occurred. My business address is Cozen O'Connor, 425 California Street, Suite 2400, California, CA 94104.

On the date set forth below, I served the foregoing document(s) on the parties, through their attorneys of record, addressed as set forth below:

- **Plaintiff PSI Corporation's Administrative Motion to Consider Whether Cases Should be Considered Related;**
- **Declaration of Daniel D. Harshman in Support of Motion to Consider Whether Cases Should be Considered Related;**
- **[Proposed] Order Granting Plaintiff PSI Corporation's Administrative Motion that Cases are Deemed Related.**

☒ **(By First Class Mail)** I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in the United States mail at San Francisco, California.

☐ **(By Facsimile)** I caused each individual on the attached list to be served via facsimile to the numbers indicated on the attached Service List.

☐ **(By Personal Service)** I caused each such envelope, with courier charges prepaid, if applicable, to be personally delivered by messenger and/or in-house messenger to the offices of each addressee.

☐ **(By Federal Express/UPS)** I caused each such envelope, with shipping charges fully prepaid, to be delivered to a Federal Express/UPS pick up box at San Francisco, California for next business day delivery.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

Executed July 2, 2007, at San Francisco, California.

By: 

Maria J. Uhl

SERVICE LIST

Lawrence A. Weiss, Esq. Attorneys for Defendant
Ryan D. Marsh, Esq. friendlyway AG
Holly B. Baudler
Heller Ehrman LLP Service via E-Filing Program
275 Middlefield Road
Menlo Park, California 94025-3506
Telephone: 650/324-7000
Facsimile: 650/324-0638
Email: Weiss@hellerehrman.com
Ryan.Marsh@hellerehrman.com
Holly.Baudler@hellerehrman.com

Harry G. Lewis, Esq. Attorneys for Defendants
Brian V. Donnelly, Esq. Alexander von Welczeck and
Cornestone Law Corp. Henry Lo
595 Market Street, Suite 2360
San Francisco, California 94105 Service via E-Filing Program
Telephone: 415/974-1900
Facsimile: 415/974-6433

Carl Lippenberger, Esq. Attorneys for Nominal Defendant
Lippenberger, Thompson, Welch, Soroko & Gil Karl Johannsmeier
235 Pine Street, Suite 1300
San Francisco, California 94104-2733 Service via E-Filing Program
Telephone: 415/262-1200
Facsimile: 415/262-1212

Michael Draper
405 – 12th Avenue
San Francisco, California 94118

Dermaplus, Inc.
c/o Michael Draper
405 – 12th Avenue
San Francisco, California 94118

Pacific Capsource, Inc.
1110 Salem Rose Court
Las Vegas, NV 89144

PROOF OF SERVICE

I, the undersigned, declare: I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the County of San Francisco, California, in which county the within mentioned service occurred. My business address is Cozen O'Connor, 425 California Street, Suite 2400, California, CA 94104.

On the date set forth below, I served the foregoing document(s) on the parties, through their attorneys of record, addressed as set forth below:

**DEFENDANT PSI CORPORATION'S NOTICE OF FILING OF
ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE
CONSOLIDATED**

☐ (First Class Mail) I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in the United States mail at San Francisco, California.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

Executed Aug. 1, 2007, at San Francisco, California.

By: 

Maria J. Uhl

SERVICE LIST

Lawrence A. Weiss, Esq. Attorneys for Plaintiff
Ryan D. Marsh, Esq. friendlyway AG
Holly B. Baudler
Heller Ehrman LLP Service via E-Filing Program
275 Middlefield Road
Menlo Park, California 94025-3506
Telephone: 650/324-7000
Facsimile: 650/324-0638
Email: Weiss@hellerehrman.com
Ryan.Marsh@hellerehrman.com
Holly.Baudler@hellerehrman.com